



COMMONWEALTH OF KENTUCKY  
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**OAG 17-022**

October 13, 2017

*Subject:* Whether a school board may extend health insurance benefits that are paid by the state to employees on unpaid maternity leave beyond the twelve (12) workweeks allowed by the Family and Medical Leave Act.

*Requested by:* Daniel Sherman, counsel to Muhlenberg County School Board

*Written by:* Taylor Payne, Assistant Attorney General

*Syllabus:* A school board may not extend health insurance paid by the state to employees for maternity leave beyond the twelve (12) workweeks allowed by the Family and Medical Leave Act.

*Statutes construed:* KRS 161.158; KRS 161.770; 702 KAR 1:035; 29 U.S.C.A. § 2612; 29 U.S.C.A. § 2614.

***Opinion of the Attorney General***

Daniel Sherman, counsel to the Muhlenberg County School Board (School Board), has requested an opinion of this office on behalf of the School Board to address whether the School Board may extend health insurance benefits paid by the state to employees on unpaid leave to the same extent as if the employee was not on unpaid leave. Mr. Sherman states that the School Board's Policies give the impression that health insurance benefits paid by the state are extended longer

than the twelve-week allowance of the Family and Medical Leave Act (FMLA). We advise that employees of the School Board are not eligible for state contribution for health insurance premiums while on unpaid leave. We do not read the School Board Policies to give such an impression.

KRS 161.158(1)(a) states that a school board:

[M]ay form its employees into a group or groups or recognize existing groups for the purpose of obtaining the advantages of group life, disability, medical and dental insurance, or any group insurance plans to aid its employees including the state employee health insurance group as described in KRS 18A.225 to 18A.2287, as long as the employees continue to be employed by the board of education.

If a school board:

[P]articipates in the state employee health insurance program as described in KRS 18A.225 to 18A.2287 for its active employees, all district employees who are required to be offered health insurance coverage for purposes of, and in accordance with, the federal Patient Protection and Affordable Care Act of 2010 . . . shall be eligible for the state-funded contribution appropriated by the General Assembly for the employer's contribution for active employees' health insurance coverage.

KRS 161.158(1)(c).

The FMLA requires employers of eligible employees to provide a total of twelve (12) workweeks of leave because of the birth of a child and in order to care for that child. 29 U.S.C.A. § 2612(a)(1)(A). The taking of such leave "shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced." 29 U.S.C.A. § 2614(a)(2).

Kentucky teachers may take unpaid leave pursuant to KRS 161.770. Upon written request by a teacher or superintendent, KRS 161.770(1) requires a school board to "grant a leave of absence for a period of not more than two (2) consecu-

tive school years . . . where illness, maternity, adoption of a child or children, or other disability is the reason for the request." Pursuant to 702 KAR 1:035 Section 4(3), "[a]n employee on leave without pay shall not be eligible for state contribution for health and life premiums until the employee has actively returned to work from leave."

According to Mr. Sherman, the School Board has formed its employees into the state employee health insurance group as described in KRS 18A.225 to 18A.2287 and those employees receive state contribution towards premiums. Mr. Sherman has referred this office to the School Board's Policies 03.12322 and 03.1233, which address the maternity leave afforded to employees of the School Board. Policy 03.12322 provides for twelve (12) workweeks of maternity leave in accordance with the FMLA and specifically states that "[h]ealth insurance for an employee on family and medical leave shall continue to be provided by the state on the same basis had the employee not taken leave." Policy 03.1233 corresponds to KRS 161.770 and permits "the parent of a newborn or the employee who adopts a child or children . . . be granted unpaid leave of absence not to exceed the remainder of the school year in which the birth or placement occurred. Thereafter, leave may be extended in increments of no more than one (1) year."

FMLA requires that an employee of the School Board be allowed twelve weeks of maternity leave, during which the employee is entitled to all employment benefits previously accrued. Policy 03.12322 complies with FMLA and requires health insurance benefits provided by the state to continue for these twelve weeks. If a teacher seeks additional unpaid leave beyond the twelve-weeks FMLA leave pursuant to KRS 161.770, 702 KAR 1:035 precludes state contribution for health insurance premiums until that employee has returned to active work. Therefore, we advise that the School Board may not extend health insurance benefits paid by the state to employees who take unpaid maternity leave pursuant to KRS 161.770 beyond the twelve (12) workweeks of leave allowed by the FMLA. Policy 03.1233 conforms to Kentucky law because it does not require the School Board to continue providing health insurance to an employee on unpaid leave beyond the twelve-weeks allowed by FMLA.

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A handwritten signature in cursive script, appearing to read "Taylor Payne".

Taylor Payne  
Assistant Attorney General

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